

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ATX DEBT FUND 1, LLC,
Plaintiff,

-v-

NATIN PAUL,
Defendant.

19-CV-8540 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

Former plaintiff Tuebor Reit Sub LLC (“Tuebor”) brought this contract action against Defendant Natin Paul. On August 19, 2020, the Court denied Paul’s motion to dismiss and granted his motion to stay pending the resolution of state court proceedings in Texas. (Dkt. No. 28.) The parties were directed to advise the Court of any resolution of the Texas proceedings. (Dkt. No. 28 at 14.) Tuebor filed a motion for reconsideration of the Court’s order staying the action, which remains pending. (Dkt. No. 30.) On February 16, 2021, Tuebor filed a motion to substitute ATX Debt Fund 1, LLC (“ATX”) as plaintiff (Dkt. No. 36), which the Court granted (Dkt. No. 44).

On June 30, 2021, ATX filed a letter requesting that the stay be lifted because the Texas proceedings had been resolved. (*See* Dkt. No. 40.) Specifically, ATX informed the Court that in November 2020, the United States Bankruptcy Court for the Western District of Texas entered an order lifting the stay to allow ATX to pursue its remedies under state law, and in June 2021, a foreclosure sale was held for the property at issue in Texas. (Dkt. No. 40 at 1.) Though ATX was the prevailing bidder, it explained that a deficiency remains for which Paul is allegedly liable. (Dkt. No. 40 at 2.) Paul opposed ATX’s request to lift the stay, arguing that the Texas proceedings had not been resolved because there was an ongoing action against ATX for the

allegedly wrongful foreclosure of the property. (*See* Dkt. No. 43.) On July 21, 2021, ATX filed another letter requesting that the stay be lifted and informing the Court of a recent decision by Justice Borrok of New York Supreme Court for New York County denying a motion to stay in a related matter. (*See* Dkt. No. 45.)

The Court agrees with ATX that the stay should be lifted because the proceedings in Texas have substantially advanced. A foreclosure sale of the real property that secured the loan from Tuebor to Silicon Hills took place in June 2021, and ATX was the prevailing bidder for the property. As ATX has explained, a deficiency remains and ATX is pursuing the sum due under the Guaranty of Recourse Obligations that is the subject of this action. (Dkt. No. 40 at 2.) Moreover, as my esteemed colleague in the Commercial Division has explained, even if there were not a deficiency, that would not preclude ATX from proceeding with its suit against Paul on the type of guaranty at issue here as a legal matter. (*See* Dkt. No. 45-2.) And while it is true that Paul's companies are now pursuing "wrongful foreclosure" litigation in Texas against ATX and other parties, the Court concludes that that litigation does not justify a continued stay of this action based on the guaranty.

For the foregoing reasons, ATX's request to lift the stay of this action is GRANTED and its motion for reconsideration is DENIED as moot.

Paul shall file an answer to the amended complaint within twenty-one days after the date of this order.

The Clerk of Court is directed to close the motions at Docket Numbers 30 and 45 and to lift the stay of this case.

SO ORDERED.

Dated: February 14, 2022
New York, New York



J. PAUL OETKEN
United States District Judge